

# **Portal Authority Board of Directors**

## **MINUTES**

### **Portal Authority Board of Directors Special Meeting**

**May 11, 2005**

**1:30 p.m. – 4:00 p.m.**

**Office of the Secretary of State**

**1560 Broadway (Denver Post Building)**

**Main Conference Room, Suite 200**

**Denver, CO**

#### **I. Call to Order: 1:40 p.m., Donetta Davidson, Chair**

##### **A. Roll Call**

Attendees: Arrowsmith, Rep. Cadman, Cooke, Davidson, Feingold, Jenik, and Sobanet

Excused: Sen. Groff, Marroney, Sen. May, Vogt, Wells, and Williams T.

Notes transcribed by Angie Onorofskie, Statewide Internet Portal Authority

Quorum established.

#### **II. Old Business**

No discussion.

#### **III. New Business, Donetta Davidson**

##### **A. NIC Contract**

Chair, Donetta Davidson called upon Gregg Rippy, Interim CEO, to begin the discussion about the NIC contract.

Interim CEO, Gregg Rippy recapped the events of the May 5 Board meeting. Mr. Rippy stated that the Board discussed the contract last week and received several comments from the Department of Regulatory Agencies.

Mr. Rippy suggested that he give another overview of the contract so that he could do a better job of explaining the control points. He asked the Chairwoman her preference in proceeding in the discussion.

Chair Davidson replied that she would like Gregg to give another brief overview of the contract and then go through each of the DORA comments line by line to see how those comments might be addressed in the contract.

Gregg Rippy explained that there was a model contract in the Request for Proposal. The contract in front of the Board today gives the Integrator a better

opportunity to perform, and it gives SIPA a better opportunity to succeed. The contract does not mean that SIPA has to put down any money at this point, which seemed to be a concern for Board members. Expenditure of funds is not obligated at all by the contract. Rather, the contract is an approval of processes, and there are multiple checkpoints.

Mr. Rippy gave an overview of the timeline of the contract. He stated that the integrator is required to have a business plan 120 days after the contract is signed, and the IV&V will analyze the plan. On a parallel timeline, negotiation of Task Order 1 will occur.

**Discussion:**

Bob Feingold stated his concern in getting a hook on the task orders.

Gregg Rippy responded that NIC's incentives are 'portal services', as that is where their revenue streams are generated. However, task orders are slightly different in that they are additional services or applications requested by the Board.

Jack Arrowsmith asked what the workflow looks like after the contract is signed, even before the business plan is created.

Gregg Rippy answered that the business plan must be completed within 120 days of signing the contract, during which time NIC will be working with state agencies. He stated that this does not mean an early win is impossible, and this early win will most likely be in the form of a task order. There will be a 30, 60, 90 day plan.

Greg Jenik stated that he doesn't see where it is addressed that the IV&V is performing project management.

Gregg Rippy responded that NIC doesn't necessarily have a direct relationship with IV&V, which is why it is not addressed in the contract.

Legal Counsel added that SIPA calls the shots relating to the IV&V and the Integrator. The legal lines are solid and the communication lines are dotted. Essentially, the IV&V would raise a flag and take their concern to the Board.

Rep. Cadman asked about accountability of performance measures and what has been done in other states.

Legal Counsel added that IV&V clearly raised the question of performance metrics. Monthly reports give clear metrics; if SIPA does not get what it wants, it will be dealt with on a case-by-case basis. Since SIPA will grow and evolve, specific metrics will not work. Rather SIPA needs to make sure that the proper tools are in place.

Rich Olsen of NIC added that the Annual Business Plan is a one-time snapshot of what will be going on. As General Manager, Mr. Olsen would report on basic metrics such as adoption, hits, access, etc. By request of the Board, Mr. Olsen would report on additional metrics.

Gregg Rippey added that SysTest is working on a technical and non- technical risk matrix. Gregg Rippey also stated that the IV&V team delivers reports to the Executive Director each week.

Donetta Davidson suggested that there be collaboration so that the integrator is also informed with those reports.

Rep. Cadman added that the Board would probably never have to ask if the project is running behind because they will already know.

Legal Counsel stated that NIC is operating in many states without an IV&V component, and they are doing fine. SIPA has an extra level of protection with the IV&V. The comments from DORA reflect a misunderstanding of the role of IV&V.

The Board addressed each item on the list of concerns given by the Department of Regulatory Agencies concerning the contract, not necessarily in the order listed on the document.

DORA is concerned that the Executive Director seems to have the same authority as the Board.

Mr. Rippey responded that the Executive Director does not have the same authority as the Board. He stated that as a business owner he doesn't need his lead employee asking questions about everything, instead he provides the overall direction to the lead employee. In the same way, the Executive Director must gain trust from the Board.

There were concerns related to whether or not there will be opportunity to review Attachment A and Attachment B, regarding the Statement of Work.

Legal Counsel responded that Attachment A and Attachment B would be fully visible.

There was a concern on Page 8 – “Books and Records....shall be made available to SIPA for it to audit, inspect and copy during reasonable business hours and upon reasonable prior notice to Contractor.” DORA questioned if this should be a yearly task of the IVV contractor with report to SIPA?

Legal Counsel assured the Board that the IV&V subcontractor, Clifton Gunderson should have full access to records to make sure that the financial status is good.

DORA had another concern on Page 9 -Payment Cycle: “Under no circumstances shall the timeframe for remitting received Statutory Fees exceed sixty (60) calendar days from the usage or sale date.” DORA’s concern with this is that 60 days might be too long. Also, who benefits from the interest if the 60 -day timeframe is used? Finally, does the contractor make the decision on where excess funds are invested?

Legal Counsel responded that the EGE (Eligible Governmental Entity) will spell out specific transactions, and 60 days is the absolute maximum timeframe. The EGE is with SIPA. The timeframe is not to exceed 60 days, but it is governed by what the parties agree upon. The contractor collects all fees and distributes statutory fees within 60 days to agencies. The value added will go through the contractor and a specific percentage will go back to SIPA. In almost every instance there is a benefit share. Keeping the money in escrow will build revenue streams.

Legal Counsel went on to say that the percentage is identified for operations for SIPA and a percentage for the integrator. This percentage will not be taken out of Colorado to be mixed with the parent company, NIC. In order to earn interest, it must stay in the account for a while. Usually, agencies will not allow you to keep the money for a long time without doing something with it. Every single dollar will be reported.

DORA was concerned with Page 12 – D. “State Modifications - License Rights Following Termination for Cause - SIPA’s right to use such modifications or enhancements developed by it or its Authorized Contractors shall be the same as the rights and limitations to use the Contractor Software for the Permitted Uses.” DORA’s concern with this reference is that it seems that this means that if the state makes enhancements, those enhancements become the property of the Contractor. They questioned if there is a better way to structure this?

Legal Counsel stated that SIPA must comply with Federal Regulations. NIC has developed several applications in the 18 other states. SIPA will immediately gain access to those applications developed already. NIC does not want SIPA to have the ability to make applications its own. Basically, SIPA can use the applications forever, but SIPA cannot acquire interest or sell it to other states.

Rich Olsen of Colorado Interactive added that the application can be modified for SIPA’s use, but SIPA cannot market the application to other states.

Greg Jenik stated that he is happy to see that source code will be established in an escrow account. It is worthless if you do not have the keys.

Gregg Rippy stated that escrow and how SIPA handles it should be addressed in the Annual Business Plan.

DORA had another concern on Page 12 – F. “Following the termination or expiration of this Contract, Contractor has no responsibility or liability for the maintenance, updates or modifications to the Contractor Software, and shall not be responsible for any changes to the Contractor Software or the environment upon which it is run made by SIPA or by its Authorized Contractors.”

DORA’s concern was as follows: “after termination or expiration, Contractor has no obligations; however, it appears that there is a Reservation of Rights clause (page 12 – C-1.) This appears messy and potentially a lawsuit waiting to happen. Can a transition be more clearly defined? NOTE – See Page 20 – Article 14A – continuity of Services – These two sections seem to be in conflict.”

Gregg Rippy answered that he is not sure if the two clauses are in conflict, but he gets concerned when someone says that a lawsuit is waiting to happen.

Jack Arrowsmith stated that if the contract was ended there might be a clause that says that at a negotiated fee, the integrator would continue services.

Brian Balay, Department of State, added that there should be a dynamic document that always gives a version inventory of all hardware and software. He also stated that the contractor has the obligation to give SIPA everything needed to keep moving.

Legal Counsel stated that on pg. 20, 14A Continuity of Services is six months. Then on pg 12, following termination of contract, must include a 6-month window.

Rich Olsen, Colorado Interactive, stated that Sarbanes Oxley is very clear. It says that everything is specifically covered. There is a 6-month transition period where another integrator would be trained.

Barbara Groth, Department of State, referenced pg. 12. She stated it is ambiguous. It doesn’t state when the contract is terminated. She suggested a notice of termination. She also referred to pg. 20, which suggests that the integrator is bound during the transition stage.

Gregg Rippy stated that SIPA can legislate to the worst case.

Rich Olsen of Colorado Interactive added that NIC has never had a contract terminated.

DORA had a concern with the use of the word “reasonable”.

Gregg Rippy responded that he would suggest not changing the word because it has meaning in the legal community.

Jack Arrowsmith stated that if the integrator leaves SIPA hanging, they agree to a typical rate.

Legal Counsel stated that SIPA has a six-month hook on the integrator.

Brian Balay, Department of State, encouraged lengthening the time beyond six months.

Gregg Rippy stated that if we are trying to terminate a contract with someone, we don't want to stay married to the company for too long.

Barbara Groth, Department of State asked if the contract is with the parent company, NIC or the subsidiary, Colorado Interactive.

The contract will be with the parent company, NIC.

The Board decided on five amendments to the contract, which are as follows:

1. Page 4, add provision for liquidated damages to Task Order provision
2. Page 7, Article 2A, fill in date contract approved
3. Page 13, 7H, add additional needed information to source code that will be escrowed
4. Page 20, 14A, change option period for transition to 12 months
5. Pages 26-27, delete article 26, independent contractor section, because it duplicates identical section in "special provisions"

**MOTION:** to approve the Integrator contract with NIC assuming that the five amendments will be implemented into the final draft.

Arrowsmith/ Cadman

**Discussion:**

Henry Sobanet stated that he was pleased that the big picture items that everyone was nervous about have been addressed. The first deliverable is the annual plan, which allows us to do the technical plan to make sure it works. The contract does not require any financial commitments until the task orders are executed. However, SIPA must have planning, coordinating and discussions with CIOs to make sure that services can be migrated.

Gregg Rippy stated that the understanding is correct with the first deliverable being the Annual Business Plan. He would ask that the task order is ready to go before 120 days.

Henry Sobanet added that this format gives SIPA a chance to plug into explicative items.

Legal Counsel added that some very expensive items are on the line with task orders. It is necessary to really consider those items to make sure that they are cost effective. It is very important to have very extensive coordination with all CIOs to make sure the money is wisely spent.

MOTION APPROVED UNANIMOUSLY

## **B. IV&V Task Orders**

Task Order II. - Go to Market Planning

Task Order III. – Project Management Office

Task Order IV. – Communications and Public Relations

Gregg Rippy stated that in conjunction with the IV&V contract, these task orders are necessary for the IV&V to do their job in such a way that reflects the RFP. The original Task Order was too long and too expensive. Gregg Rippy reported that is talking with the IV&V project manager every week and getting constant reports.

### **Task Order II: Go to Market Planning**

Bob Feingold stated that the costs for Task Order II do not seem out of line. However, he would like to see a definitive actionable plan drafted as a deliverable that specifically gives recommendations of who, what, where, when and why.

Mr. Feingold also expressed concern about teaming with OIT based on the need for SIPA to be independent. He agreed that SIPA should capitalize on common work and avoid duplication, but SIPA goals must be achieved. Mr. Feingold suggested getting a survey from OIT that was done in 1999 and another one done in 2001. In terms of UETA, Mr. Feingold believes this to be a reasonable approach with respect to survey work, although he is not very familiar with the work UETA has already done.

Bob Feingold believes that an understanding of the directions of both the IV&V and Integrator must be clear before any coordination of roles and responsibilities with respect to marketing can be done.

Greg Jenik stated that the IV&V team should be more careful with writing. There were several grammatical errors, and the task orders are challenging to

understand. For example: what does Fort Collins info mean? He also suggested that the IV&V be careful when referencing specific people as well. For example, Gregg Rippey should be written in the task orders as Executive Director. Also, there are hours listed, but there is no specific timeline. He believes that Task Order II needs more examination.

Henry Sobanet expressed that he would like to understand what SIPA is getting out of the marketing portion of the IV&V.

**MOTION:** to table Task Order II.

Sobanet/ Feingold

APPROVED UNANIMOUSLY

### **Task Order III: Project Management Office**

Bob Feingold believes that there is too much planning and not enough executing. There is no common understanding of what the project looks like. Mr. Feingold would like to see a topology of plans at all levels in regards to both the SIPA Annual Strategic Business Plan and the Integrator's Annual Business Plan. This will avoid overlap and gaps in planning. Unique terminology for both plans would also be helpful. All of the tasks in the task order should be more explicit and should have more appropriate deliverables.

### **Task Order IV: Portal Communications Coordinator**

Again, Mr. Feingold stated that topology and consistent terminology are needed. Also, a clear understanding of the roles and responsibilities of the IV&V Communications Coordinator and the relationship with the Integrator need to be evaluated. More explicit deliverables are still needed. This Task Order states that the IV&V will execute the plan, but he doesn't see that an actual plan has been made.

Bob Feingold recommended that the Board do first things first. A budget needs to be created for the next twelve months. The Board should have a chance to look at task orders at least a week prior to discussing them.

Legal Counsel recommended that the Executive Director should recommend a critical path to the Board.

The Interim CEO assured the Board that he would not sign anything without the full consent of the Board.

Legal Counsel stated that the discussion touches on Donetta Davidson's question of whether the cart is before the horse.



Donetta Davidson expressed that she would like for the IV&V to talk to the Integrator because NIC has gone through this process several times.

Gregg Rippy, Interim CEO, agreed. SysTest is not meant to create anything; they are responsible for supporting SIPA in project management, business analysis and marketing.

**MOTION:** to empower the Executive Director with the authority to execute task orders with the understanding that he will get the consent of the Board.

Sobanet/ Feingold

**Discussion:**

Legal Counsel explained that this motion doesn't constitute that SIPA is conducting business outside of the open meeting.

Bob Feingold stated that the Executive Director does not have the staff, time or expertise to completely analyze task orders. He also recommended that the Executive Director talk to CIOs for advice as well.

Jack Arrowsmith asked for a clarification of the motion. He asked if the Board was asking the Executive Director to move ahead with the critical path or to rework the task orders.

The Board agreed that the directive is to concentrate on the critical path.

The motion was reworded to state the following:

**MOTION:** to empower the Executive Director to develop and execute a new Task Order II while concentrating on the critical path.

**APPROVED UNANIMOUSLY**

**C. Media Kit**

The Executive Director stated that the Board does not necessarily need to approve the media kit. They were given a draft and should provide any comments or changes.

Henry Sobanet asked if SIPA is working on developing a brand. He suggested that perhaps SIPA should use the new brand that Office of Economic Development has created. He stated that SIPA has only one chance to make a good first impression with its brand.

Rich Olsen of Colorado Interactive stated that NIC has done all of the branding in each of their 18 state portals, and they would be happy to work on the Colorado brand.

#### IV. Agenda Items for Next Meeting

- Vendor selection process status
- Task order status
- Performance measures development status
- Communications plan update
- Business processes update
- Roadmap update
- Operations financial summary
- Change to by-laws
- Change to reimbursement policy
- Media Kit
- Colorado Interactive presentation
- Bob Feingold tree

***Next meeting is scheduled for:***

Thursday, June 2, 2005

1:30 p.m. – 4:00 p.m.

Location TBA

#### V. Adjournment

Chair, Donetta Davidson called for a motion to adjourn the May 11, 2005 SIPA Board of Directors meeting.

MOTION: to adjourn the May 11, 2005 SIPA Board of Directors meeting.

Sobanet/ Jenik

APPROVED UNANIMOUSLY

The meeting adjourned at 4:05 p.m.